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8
 9 BEFORE THE DEPARTMENT OF CORPORATIONS
 10 OF THE STATE OF CALIFORNIA
 11

12	In the Matter of THE CALIFORNIA)	Case No.: 413-0252
13	CORPORATIONS COMMISSIONER,)	
14	Complainant,)	AMENDED STATEMENT OF FACTS IN
15	vs.)	SUPPORT OF ORDER TO DISCONTINUE
16)	VIOLATIONS PURSUANT TO CALIFORNIA
17	MOUNTAIN STATES MORTGAGE)	FINANCIAL CODE SECTION 50321
18	CENTERS, INC.,)	
19	Respondent.)	

20 The Complainant is informed and believes and based upon such information and belief,
 21 alleges and charges as follows:

22 1. Mountain States Mortgage Centers, Inc. ("Mountain") is a residential mortgage lender
 23 and loan servicer licensed by the California Corporations Commissioner ("Commissioner" or
 24 "Complainant") pursuant to the California Residential Mortgage Lending Act ("CRMLA")
 25 (California Financial Code Section 50000 et seq.).

26 2. On or about August 15, 2001, the Commissioner commenced a regulatory
 27 examination of the books and records of Mountain. The regulatory examination disclosed that in
 28 7 of 9 (78%) of the loan files reviewed for credit reporting fees, Mountain charged the borrower

1 credit report fees which were greater than the actual charges incurred by Mountain for these third
2 party services (“greater credit report fees”). Mountain has been unable to substantiate that it
3 performed any services in relation to the credit reports, and as such the greater credit report fees
4 constituted a violation of California Financial Code section 50505 and also constituted an unfair
5 practice in violation of California Financial Code section 50204(i). The amount of such greater
6 credit report fees averaged \$17.43 per loan. Moreover, in 3 of the 7 (43%) loans in which greater
7 credit report fees were found, the borrowers had been required to pay the credit report fees prior to
8 loan closing in violation of California Financial Code section 50203(a)(1), which specifically allows
9 only actual charges incurred by the lender for third party services if the fees are required to be paid
10 prior to loan closing.

11 3. The regulatory examination further disclosed that in all the loans in which the greater
12 credit report fees were found, the Settlement Statement prepared and delivered to the borrower failed
13 to disclose the payment to the actual service provider, and that the remainder of the credit report fee
14 charged was retained by Mountain, a violation of California Financial Code section 50505.

15 4. In the prior regulatory examination commenced in November 1999, the
16 Commissioner found that Mountain had charged the borrower greater credit report fees in 5 of 10
17 (50%) of the loans reviewed. Based upon the findings of the 1999 regulatory examination, the
18 Commissioner instructed Mountain to perform an internal audit of all the loans it had originated
19 since licensure on February 1, 1999, and make refunds where appropriate. Mountain was further
20 requested by the Commissioner to implement such procedures as necessary to ensure that greater
21 credit report fees were not charged in the future.

22 5. Mountain was unable at the time of the 2001 regulatory examination to evidence that
23 it conducted the review and made appropriate refunds as previously instructed by the Commissioner
24 concerning the 1999 regulatory examination findings. Mountain was also unable to substantiate that
25 it had made refunds on the greater credit report fees specifically found by the Commissioner during
26 the 1999 regulatory examination. The specific greater credit report fees found by the Commissioner
27 in 1999 were refunded by Mountain in February 2002.

1 6. The findings of the 2001 regulatory examination disclose that Mountain failed to
2 implement adequate procedures to ensure that greater credit report fees would not be charged in the
3 future.

4 7. By reason of the foregoing, Mountain has violated California Financial Code sections
5 50203(a)(1), 50204(i) and 50505.

6 8. Financial Code section 50321 provides in pertinent part:

7 If, after investigation, the commissioner has reasonable grounds
8 to believe that any licensee has violated its articles of incorporation or
9 any law or rule binding upon it, the commissioner shall, by written order
10 addressed to the licensee, direct the discontinuance of the violation. The
order shall be effective immediately, but shall not become final except
in accordance with the provisions of Section 50323.

11 9. Section 50323 of the Financial Code provides:

12 (a) No order issued pursuant to Section 50321 or 50322 may become
13 final except after notice to the affected licensee of the commissioner's
14 intention to make the order final and of the reasons for the finding. The
15 commissioner shall also notify the licensee that upon receiving a
16 request the matter will be set for hearing to commence within 15 business
17 days after receipt. The licensee may consent to have the hearing
18 commenced at a later date. If no hearing is requested within 30 days
19 after the mailing or service of the required notice, and none is ordered
20 by the commissioner, the order may become final without hearing and
21 the licensee shall immediately discontinue the practices named in the
22 order. If a hearing is requested or ordered, it shall be held in accordance
23 with the provisions of the administrative Procedure Act (Chapter 5
24 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of
the Government Code), and the commissioner shall have all the powers
granted under that act. If, upon the hearing, it appears to the commissioner
that the licensee is conducting business in an unsafe and injurious manner
or is violating its articles of incorporation or any law of this state, or any
rule binding upon it, the commissioner shall make the order of discontinuance
final and the licensee shall immediately discontinue the practices named
in the order.

25 (b) The licensee has 10 days after an order is made final to commence to
26 restrain enforcement of the order. If enforcement of the order is not
27 enjoined within 10 days by the court in which the action is brought,
28 the licensee shall comply with the order.

1 WHEREFORE, good cause showing, the Commissioner is issuing an Order to Discontinue
2 Violations Pursuant to Financial Code Section 50321 and notifying Mountain of his intention to
3 make the order final.

4 Dated: July 22, 2004
5 Los Angeles, California

WILLIAM P. WOOD
California Corporations Commissioner

6 By _____
7 Judy L. Hartley
8 Senior Corporations Counsel